IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6147 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHUSHALBHAI PARBHUBHAI PATEL

Versus

NAVCHETAN DEVELOPERS THRO.PARTNER HEMANT K KANSARA

Appearance:

MR SURESH M SHAH for Petitioner No. 1-8

MR MEHUL S SHAH for Petitioner No. 1-8

MR HRIDAY BUCH for the Respondents.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 29/07/2004

ORAL JUDGEMENT

Rule. Learned counsel for the respondents waives service of notice of Rule on behalf of

the respondents. With the consent of the learned counsel for the parties, this petition is taken up for final hearing.

2. The present petition has been preferred under Article 227 of the Constitution of India, whereby the petitioners are challenging the judgment and order dated 4th May, 2004 below exh. 32 in Civil Appeal No. 35 of 2003 passed by the Joint District Judge, Valsad.

3. The petitioners are the original plaintiffs in Civil Suit NO. 12 of 2003. The suit was filed by the petitioners for a declaration of the rights as tenants for the property situated at city survey no.1005 admeasuring 1524 sq.mtrs. situated in village Dharampur, Dist: Valsad.

4. The learned counsel for the petitioners submitted that the Regular Civil Suit no. 12 of 2002 was preferred by the petitioners before learned Civil Judge (J.D.), Dharampur alongwith an application exh. 5 for injunction. The said injunction application was decided in favour of the petitioners (original plaintiffs) by the learned Civil Judge (J.D.), Dharampur vide his order dated 3rd September, 2003. Being aggrieved by the said order of the learned Civil Judge (J.D.), Dharampur, the respondents (original defendants) preferred Civil Appeal No. 35 of 2003 before the District Court. The learned counsel for the petitioners submitted that the suit property bearing city survey no. 1005 admeasuring 1524 sq.mtrs. is in possession of the petitioners since last more than 20 years as tenants. The petitioners are using the suit properties as tenants without any interference since long. The original owner has died and thereafter, the respondents have become owners of the said property. In fact, the respondent no.1 (original defendant no. 4) wants to make construction in some of the parts of the said city survey no. 1005 so as to obstruct the tenancy rights of the petitioners (original plaintiffs). The learned counsel for the petitioners submitted that the whole survey no. 1005 admeasuring 1524 sq.mtrs. is being used by the petitioners. There are more than one dwelling unit of the petitioners upon the said survey number. There are also number of latrines on the said survey number. Thus, the whole premises is being used by the families of the petitioners. But the respondents are unnecessarily interfering in the peaceful possession of the property of the petitioners and therefore, alongwith the suit, an application exh. 5 for injunction was preferred by the petitioners and the same was decided by the learned trial Judge in favour of the petitioners. It

is submitted by the learned counsel for the petitioners that the possession of the petitioners of the said premises since last more than two decades has not been appreciated by the lower appellate court. The premises bearing city survey no. 1005 is a very small premises admeasuring 1524 sq.mtrs. There are more than 20 dwelling units in which the families of the petitioners are residing. Over and above dwelling units, there is also a construction of number of latrines upon the said premises. Whatever is left out as an open space is also being used and enjoyed peacefully since last more than 20 years by the families of the present petitioners. These facts ought to have satisfied the lower appellate court to uphold the injunction order granted by the trial court and by not appreciating the aforesaid long tenure of possession of the petitioners, the lower appellate court has set aside the order passed by the trial court which is absolutely bad in law and de hors the facts. Hence, the order passed by the lower appellate court deserves to be quashed and set aside.

5. The learned counsel for the respondents mainly submitted that only part of the said survey number, that is, the area admeasuring 394.37 sq.mtrs. was given on rent and therefore, this aspect has been correctly appreciated by the lower appellate court and hence, there is no illegality or error or perversity in the order passed by the lower appellate court. It is also submitted by the learned counsel for the respondents that the respondents (original defendants) are not going to obstruct any of the rights of the petitioners. The main contention of the respondent no.1 (original defendant no. 4) is that the respondent no.1 has purchased part of the land of city survey no. 1055 admeasuring 1140 sq.mtrs., out of total 1524 sq.mtrs. of land, vide registered sale deed dated 11th March, 2002 from the respondent nos. 2,3 and 4 (original respondent nos. 1,2 and 3). Thus, possession of city survey no. 1005 admeasuring 140 sq.mtrs. has also been taken by respondent no.1 (original defendant no. 4) from respondent nos. 2,3 and 4 and hence, the petitioners have no right, title or interest upon the said land and therefore, the suit filed by the petitioners is devoid of any substance and therefore, the order passed by the lower appellate court deserves to be confirmed.

6. I have perused the case papers and the orders passed by the court below. Looking to the long tenure of possession of the petitioners of more than two decades, the order passed by the trial court below injunction application exh. 5 in Civil Suit No. 12 of

2002 is true and correct. The long tenure of possession and the usage of the suit premises by the petitioners have not been properly appreciated by the lower appellate court while passing the order in Civil Appeal No. 35 of 2003. A number of families are residing on the said land since years. They are having their dwelling units as well as other constructions on the said premises which is being used by them since long. If the interim injunction granted by the trial court is allowed to be vacated, then irreparable loss would be caused to the petitioners. As stated hereinabove, the respondent no.1 (original defendant no. 4) is a developer of the building. Once the building is allowed to be constructed and the land is allowed to be developed, there shall be an irreparable loss to the petitioners which cannot be compensated in terms of money. It may also lead to multiplicity of proceedings and suits. To avoid these types of further complications, a legally sound and factually correct order was passed by the trial court. As the suit is pending, it is not necessary to go into fine niceties of facts. Suffice it to say that the order dated 4th May, 2004 passed by the lower appellate court in Civil Appeal No. 35 of 2003 is bad in law and bad in facts. There is a grave error on the face of the record. The long drawn possession of more than two decades by the number of families has not been appreciated at all by the lower appellate court. This is over and above the prima facie case and balance of convenience in favour of the petitioners coupled with the fact that an irreparable loss will be caused to the petitioners if the injunction as prayed for is not granted. This aspect of the matter has been lost sight of by the lower appellate court.

7. Thus, in the result, this petition deserves to be allowed and is accordingly allowed. The judgment and order dated 4th May, 2004 passed by the Learned Joint District Judge, Valsad in Civil Appeal no. 35 of 2003 is hereby quashed and set aside and the order dated 3rd September, 2003 below injunction application exh. 5 in Civil Suit no. 12 of 2002 passed by the learned Civil Judge (J.D.), Dharampur is restored. However, the trial Court is directed to dispose of Civil Suit no. 12 of 2002 as early as possible and practicable and preferably within a period of four months from the date of receipt of writ from this Court. Rule made absolute accordingly with no order as to costs.

(D.N.Patel,J)

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